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Pers. 16

OGC 7-1744

OGC Has Reviewed

25 October 1957

MEMORANDUM FOR: Chief, Western Hemisphere Division

ATTENTION:

SUBJECT: Prohibition Against Payment of Annuities or Retirement Benefits to Persons Convicted of Certain Crimes

1. You have requested that we ascertain the position of the Civil Service Commission and such other departments as may have jurisdiction concerning the so-called Hiss Act, 5 U.S.C. 740c. Your concern relates to a case where a retired Customs official has been indicted for attempting to smuggle arms from the United States to Cuba. You also advised us that an attempt by the United States attorney prosecuting the case to discontinue prosecution has been refused by the Department of Justice and that it is the position of the Department of Justice that forfeiture of retirement benefits would not necessarily result from conviction.

2. 5 U.S.C. 740c relating to convictions as barring payment of annuities or retired-pay benefits reads in part as follows:

"There shall not be paid to any person convicted prior to, on, or after September 1, 1954 of any of the following offenses described in this section, or to the survivor or beneficiary of such person so convicted, for any period subsequent to the date of such conviction or September 1, 1954, whichever is later, any annuity or retired pay on the basis of the service of such person as an officer or employee of the Government:

* * *

"(2) Any offense (not including any offense within the purview of section 13 of Title 18) which is a felony under the laws of the United States or of the District of Columbia. . . . (B) committed after the termination of his service as an officer or employee of the Government but directly involving, directly resulting from, or directly relating to, the improper exercise of his authority, influence, power, or privileges during any period of his service as such an officer or employee;"

3. Conversation with the Office of the Legal Counsel, General Accounting Office, indicates that even though G.A.O. has a responsibility for monitoring the application of this Act, they feel that they are almost completely dependent upon the Retirement Division, Civil Service Commission, for the actual application.

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4. It is the opinion of Mr. Andrew E. Ruddock, Chief, Retirement Division, Civil Service Commission, that forfeiture of retirement benefits would result from conviction, regardless of whether the sentence imposed was very heavy or was very light and suspended, in a case where a retired Customs officer was indicted for an offense involving export of arms. He stated that forfeiture has even resulted in a case where a letter-carrier took home with him a Life Magazine that was undeliverable. Even though the court imposed no penalties but rather a very small fine which was suspended, it was necessary under the terms of the Act to require forfeiture of retirement benefits. In another case which was stated to illustrate the point, a District of Columbia rookie policeman who was indicted in the late 1920's for an offense committed while in uniform, was given a suspended sentence, and was shortly thereafter employed by the Federal Government where he worked with an unblemished record until a year or so ago. Forfeiture of retirement benefits resulted.

5. It would appear from the foregoing information plus our own study of the Act that forfeiture of retirement benefits may well result in the case you have under consideration even though the individual were to plead nolo contendere and be given a small fine which might be suspended. However, it is cautioned that the information presented herein should not be used as the basis for advising the defendant as to the course of action he should follow under the indictment.

6. If we may be of further assistance in gathering information for you, we will be glad to do so.


Assistant General Counsel

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